

BEFORE THE  
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation against:

MARIUS EUGENE NELSEN  
21801 Stevens Creek Boulevard, Suite 8  
Cupertino, CA 95014

Civil Engineer License No. C 20597,

Respondent.

Case No. 930-A

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on April 29, 2011.

IT IS SO ORDERED March 24, 2011.

*Original Signed*

\_\_\_\_\_  
BOARD FOR PROFESSIONAL ENGINEERS,  
LAND SURVEYORS, AND GEOLOGISTS  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 MICHAEL B. FRANKLIN  
Deputy Attorney General  
4 State Bar No. 136524  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
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Attorneys for Complainant  
7

8 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND**  
9 **GEOLOGISTS**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 930-A

12 **MARIUS EUGENE NELSEN**  
21801 Stevens Creek Boulevard, Suite 7  
13 Cupertino, CA 95014  
14 Civil Engineer License No. C 20597

OAH No. 2010090724

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Respondent.

16  
17  
18 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
19 interest and the responsibility of the Board for Professional Engineers, Land Surveyors, and  
20 Geologists of the Department of Consumer Affairs, the parties hereby agree to the following  
21 Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval  
22 and adoption as the final disposition of the Accusation.

23 **PARTIES**

24 1. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for  
25 Professional Engineers, Land Surveyors, and Geologists. Former Executive Officer David E.  
26 Brown brought this action solely in his official capacity. Complainant is represented in this  
27 matter by Kamala D. Harris, Attorney General of the State of California, by Michael B. Franklin,  
28 Deputy Attorney General.

2. Respondent Marius Eugene Nelsen (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about April 26, 1971, the Board for Professional Engineers, Land Surveyors, and Geologists issued Civil Engineer License No. C 20597 to Marius Eugene Nelsen (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 930-A and will expire on September 30, 2011, unless renewed.

## JURISDICTION

4. Accusation No. 930-A was filed before the Board for Professional Engineers, Land Surveyors, and Geologists (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 10, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 930-A is attached as exhibit A and incorporated herein by reference.

### ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 930-A. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent understands and agrees that the charges and allegations in Accusation  
3 No. 930-A, if proven at a hearing, constitute cause for imposing discipline upon his Civil  
4 Engineer License.

5 9. For the purpose of resolving the Accusation without the expense and uncertainty of  
6 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual  
7 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest  
8 those charges.

9 10. Respondent agrees that his Civil Engineer License is subject to discipline and he  
10 agrees to be bound by the Board for Professional Engineers, Land Surveyors, and Geologists  
11 (Board)'s probationary terms as set forth in the Disciplinary Order below.

12 RESERVATION

13 11. The admissions made by Respondent herein are only for the purposes of this  
14 proceeding, or any other proceedings in which the Board for Professional Engineers, Land  
15 Surveyors, and Geologists or other professional licensing agency is involved, and shall not be  
16 admissible in any other criminal or civil proceeding.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board for Professional Engineers,  
19 Land Surveyors, and Geologists. Respondent understands and agrees that counsel for  
20 Complainant and the staff of the Board for Professional Engineers, Land Surveyors, and  
21 Geologists may communicate directly with the Board regarding this stipulation and settlement,  
22 without notice to or participation by Respondent. By signing the stipulation, Respondent  
23 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation  
24 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation  
25 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
26 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
27 and the Board shall not be disqualified from further action by having considered this matter.

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13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Civil Engineer License No. C 20597 issued to Respondent Marius Eugene Nelsen (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for four (4) years on the following terms and conditions.

1. **Obey All Laws.** The Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

2. **Submit Reports.** The Respondent shall submit such special reports as the Board may require.

3. **Tolling of Probation.** The period of probation shall be tolled during the time the Respondent is practicing exclusively outside the state of California. If, during the period of probation, the Respondent practices exclusively outside the state of California, the Respondent shall immediately notify the Board in writing.

4. **Violation of Probation.** If the Respondent violates the probationary conditions in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter

1 has been submitted to the Office of the Attorney General for the filing of such, the Board shall  
2 have continuing jurisdiction until all matters are final, and the period of probation shall be  
3 extended until all matters are final.

4       **5. Completion of Probation.** Upon successful completion of all of the probationary  
5 conditions and the expiration of the period of probation, the Respondent's license shall be  
6 unconditionally restored.

7       **6. Cost Recovery.** Within three and one-half (3 ½) years from the effective date of the  
8 decision, the Respondent shall reimburse the Board for its costs of investigation and prosecution  
9 of this matter in the amount of \$3,300.00. Said reimbursement may be made in installments.  
10 Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a  
11 violation of the probation order, unless the Board agrees in writing to payment by an installment  
12 plan because of financial hardship.

13       **7. Examination.** Within 60 days of the effective date of the decision, the Respondent  
14 shall successfully complete and pass the California Laws and Board Rules examination, as  
15 administered by the Board.

16       **8. Ethics Course.** Within three and one-half (3 ½) years of the effective date of the  
17 decision, the respondent shall successfully complete and pass a course in professionalism and  
18 ethics, approved in advance by the Board or its designee. The respondent shall provide the Board  
19 with official proof of completion of the requisite course.

20       **9. Notification.** Within 30 days of the effective date of the decision, the Respondent  
21 shall provide the Board with evidence that he has provided all persons or entities with whom he  
22 has a contractual or employment relationship such that the relationship is in the area of practice of  
23 professional engineering and/or professional land surveying in which the violation occurred with  
24 a copy of the decision and order of the Board and shall provide the Board with the name and  
25 business address of each person or entity required to be so notified. During the period of  
26 probation, the Respondent may be required to provide the same notification of each new person  
27 or entity with whom he has a contractual or employment relationship such that the relationship is  
28 in the area of practice of professional engineering and/or land surveying in which the violation

1 occurred and shall report to the Board the name and address of each person or entity so notified.

2       10. **Take And Pass Examinations.** Within three and one-half (3 ½) years from the  
3 effective date of the decision, the Respondent shall successfully complete and pass, with a grade  
4 of "C" or better, one (1) college-level land surveying course, approved in advance by the Board  
5 or its designee. For purposes of this condition, "college-level course" shall mean a course offered  
6 by a community college or a four year university of three semester units or the equivalent;  
7 "college-level course" does not include seminars. The Respondent shall provide the Board with  
8 verifiable proof in the form of an official transcript of his completion of the required course; said  
9 proof shall be provided within sixty (60) days of the completion of the course.

10       11. **Records.** For the record of survey found not to have been filed and recorded, [Shafer  
11 project] the respondent shall file or record, as appropriate, the required record with the  
12 appropriate governmental agency within ninety (90) days from the effective date of the decision.  
13 The respondent shall timely and appropriately respond to all comments, questions, and/or  
14 concerns raised by the County Surveyor's Office regarding the record of survey during the review  
15 and approval process. The respondent shall provide the Board with verifiable proof that the  
16 required record have been filed or recorded, as appropriate, by the governmental agency within  
17 thirty (30) days of such filing or recordation. The respondent shall bear all costs, including any  
18 county checking and filing fees, for the filing and recordation of said record.

19  
20                                   ACCEPTANCE

21       I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
22 stipulation and the effect it will have on my Civil Engineer License. I enter into this Stipulated  
23 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
24 bound by the Decision and Order of the Board for Professional Engineers, Land Surveyors, and  
25 Geologists.

26  
27       DATED: January 28, 2011       Original Signed  
28                                   MARIUS EUGENE NELSEN  
  Respondent



1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
3 submitted for consideration by the Board for Professional Engineers, Land Surveyors, and  
4 Geologists of the Department of Consumer Affairs.

5 Dated: January <sup>28</sup> 2011

6 Respectfully submitted,

7 KAMALA D. HARRIS  
8 Attorney General of California  
9 FRANK H. PACOE  
10 Supervising Deputy Attorney General

11 MICHAEL B. FRANKLIN  
12 Deputy Attorney General  
13 *Attorneys for Complainant*

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**Exhibit A**

**Accusation No. 930-A**

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 MICHAEL B. FRANKLIN  
Deputy Attorney General  
4 State Bar No. 136524  
455 Golden Gate Avenue, Suite 11000  
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*Attorneys for Complainant*  
7

8 **BEFORE THE**  
9 **BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 930-A

13 **MARIUS EUGENE NELSEN**  
21801 Stevens Creek Boulevard, Suite 8  
Cupertino, CA 95014,

**A C C U S A T I O N**

14 **Civil Engineer License No. C 20597,**

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. David E. Brown (Complainant) brings this Accusation solely in his official capacity  
19 as the Executive Officer of the Board for Professional Engineers and Land Surveyors,  
20 Department of Consumer Affairs.

21 2. On or about April 26, 1971, the Board for Professional Engineers and Land Surveyors  
22 issued Civil Engineer License Number C 20597 to Marius Eugene Nelsen (Respondent). The  
23 Civil Engineer License was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on September 30, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land  
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.  
28 All section references are to the Business and Professions Code unless otherwise indicated.

1       4.     Section 8759 of the Code states:

2       "(a) A licensed land surveyor or registered civil engineer authorized to practice land  
3     surveying shall use a written contract when contracting to provide professional services to a client  
4     pursuant to this chapter. The written contract shall be executed by the licensed land surveyor or  
5     registered civil engineer and the client, or his or her representative, prior to the licensed land  
6     surveyor or registered civil engineer commencing work, unless the client knowingly states in  
7     writing that work may be commenced before the contract is executed. The written contract shall  
8     include, but not be limited to, all of the following:

9       (1) A description of the services to be provided to the client by the licensed land surveyor  
10    or registered civil engineer.

11       (2) A description of any basis of compensation applicable to the contract, and the method of  
12    payment agreed upon by the parties.

13       (3) The name, address, and license or certificate number of the licensed land surveyor or  
14    registered civil engineer, and the name and address of the client.

15       (4) A description of the procedure that the licensed land surveyor or registered civil  
16    engineer and the client will use to accommodate additional services.

17       (5) A description of the procedure to be used by any party to terminate the contract.

18       (b) This section shall not apply to any of the following:

19       (1) Professional land surveying services rendered by a licensed land surveyor or registered  
20    civil engineer for which the client will not pay compensation.

21       (2) A licensed land surveyor or registered civil engineer who has a current or prior  
22    contractual relationship with the client to provide professional services pursuant to this chapter,  
23    and that client has paid the surveyor or engineer all of the fees that are due under the contract.

24       (3) If the client knowingly states in writing after full disclosure of this section that a  
25    contract which complies with the requirements of this section is not required.

26       (4) Professional services rendered by a licensed land surveyor or a registered civil engineer  
27    to any of the following:

28    ///

1 (A) A professional engineer licensed or registered under Chapter 7 (commencing with  
2 Section 6700).

3 (B) A land surveyor licensed under this chapter.

4 (C) An architect licensed under Chapter 3 (commencing with Section 5500).

5 (D) A contractor licensed under Chapter 9 (commencing with Section 7000).

6 (E) A geologist or a geophysicist licensed under Chapter 12.5 (commencing with Section  
7 7800).

8 (F) A manufacturing, mining, public utility, research and development, or other industrial  
9 corporation, if the services are provided in connection with or incidental to the products, systems,  
10 or services of that corporation or its affiliates.

11 (G) A public agency.

12 (c) "Written contract" as used in this section includes a contract that is in electronic form..

13 5. Section 8762 of the Code states:

14 "(a) Except as provided in subdivision (b), after making a field survey in conformity with  
15 the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the  
16 county surveyor in the county in which the field survey was made, a record of the survey.

17 (b) Notwithstanding subdivision (a), after making a field survey in conformity with the  
18 practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the  
19 county surveyor in the county in which the field survey was made a record of the survey relating  
20 to land boundaries or property lines, if the field survey discloses any of the following:

21 (1) Material evidence or physical change, which in whole or in part does not appear on any  
22 subdivision map, official map, or record of survey previously recorded or properly filed in the  
23 office of the county recorder or county surveying department, or map or survey record maintained  
24 by the Bureau of Land Management of the United States.

25 (2) A material discrepancy with the information contained in any subdivision map, official  
26 map, or record of survey previously recorded or filed in the office of the county recorder or the  
27 county surveying department, or any map or survey record maintained by the Bureau of Land  
28

1 Management of the United States. For purposes of this subdivision, a “material discrepancy” is  
2 limited to a material discrepancy in the position of points or lines, or in dimensions.

3 (3) Evidence that, by reasonable analysis, might result in materially alternate positions of  
4 lines or points, shown on any subdivision map, official map, or record of survey previously  
5 recorded or filed in the office of the county recorder or the county surveying department, or any  
6 map or survey record maintained by the Bureau of Land Management of the United States.

7 (4) The establishment of one or more points or lines not shown on any subdivision map,  
8 official map, or record of survey, the positions of which are not ascertainable from an inspection  
9 of the subdivision map, official map, or record of survey.

10 (5) The points or lines set during the performance of a field survey of any parcel described  
11 in any deed or other instrument of title recorded in the county recorder's office are not shown on  
12 any subdivision map, official map, or record of survey.

13 (c) The record of survey required to be filed pursuant to this section shall be filed within 90  
14 days after the setting of boundary monuments during the performance of a field survey or within  
15 90 days after completion of a field survey, whichever occurs first.

16 (d)(1) If the 90-day time limit contained in subdivision (c) cannot be complied with for  
17 reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day  
18 time period shall be extended until the time at which the reasons for delay are eliminated. If the  
19 licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or  
20 she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter  
21 stating that he or she is unable to comply. The letter shall provide an estimate of the date for  
22 completion of the record of survey, the reasons for the delay, and a general statement as to the  
23 location of the survey, including the assessor's parcel number or numbers.

24 (2) The licensed land surveyor or licensed civil engineer shall not initially be required to  
25 provide specific details of the survey. However, if other surveys at the same location are  
26 performed by others which may affect or be affected by the survey, the licensed land surveyor or  
27 licensed civil engineer shall then provide information requested by the county surveyor without  
28 unreasonable delay.

1 (e) Any record of survey filed with the county surveyor shall, after being examined by him  
2 or her, be filed with the county recorder.

3 (f) If the preparer of the record of survey provides a postage-paid, self-addressed envelope  
4 or postcard with the filing of the record of survey, the county recorder shall return the postage-  
5 paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing  
6 data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the  
7 date, the book or volume, and the page at which the record of survey is filed with the county  
8 recorder."

9 6. Section 8780 of the Code states:

10 "The board may receive and investigate complaints against licensed land surveyors and  
11 registered civil engineers, and make findings thereon.

12 By a majority vote, the board may reprove, suspend for a period not to exceed two years, or  
13 revoke the license or certificate of any licensed land surveyor or registered civil engineer,  
14 respectively, licensed under this chapter or registered under the provisions of Chapter 7  
15 (commencing with Section 6700), whom it finds to be guilty of:

16 (a) Any fraud, deceit, or misrepresentation in his or her practice of land surveying.

17 (b) Any negligence or incompetence in his or her practice of land surveying.

18 . . .

19 (d) Any violation of any provision of this chapter or of any other law relating to or  
20 involving the practice of land surveying.

21 . . .

22 (g) A breach or violation of a contract to provide land surveying services.

23 . . . "

24 7. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove,  
25 suspend for a period not to exceed two years, or revoke the certificate of any professional  
26 engineer registered under this chapter:

27 . . .

28 ///

1 (c) Who has been found guilty by the board of negligence or incompetence in his or her  
2 practice.

3 (d) Who has been found guilty by the board of any breach or violation of a contract to  
4 provide professional engineering services.

5 . . .

6 "(h) Who violates any provision of this chapter."

7 8. Section 6735 of the Code states:

8 "(a) All civil (including structural and geotechnical) engineering plans, calculations,  
9 specifications, and reports (hereinafter referred to as "documents") shall be prepared by, or  
10 under the responsible charge of, a licensed civil engineer and shall include his or her name  
11 and license number. Interim documents shall include a notation as to the intended purpose  
12 of the document, such as "preliminary," "not for construction," "for plan check only," or  
13 "for review only." All civil engineering plans and specifications that are permitted or that  
14 are to be released for construction shall bear the signature and seal or stamp of the licensee  
15 and the date of signing and sealing or stamping. All final civil engineering calculations and  
16 reports shall bear the signature and seal or stamp of the licensee, and the date of signing and  
17 sealing or stamping. If civil engineering plans are required to be signed and sealed or  
18 stamped and have multiple sheets, the signature, seal or stamp, and date of signing and  
19 sealing or stamping shall appear on each sheet of the plans. If civil engineering  
20 specifications, calculations, and reports are required to be signed and sealed or stamped and  
21 have multiple pages, the signature, seal or stamp, and date of signing and sealing or  
22 stamping shall appear at a minimum on the title sheet, cover sheet, or signature sheet.

23 . . . "

24 9. Section 6749 of the Code states:

25 "(a) A professional engineer shall use a written contract when contracting to provide  
26 professional engineering services to a client pursuant to this chapter. The written contract  
27 shall be executed by the professional engineer and the client, or his or her representative,  
28 prior to the professional engineer commencing work, unless the client knowingly states in



1 writing that work may be commenced before the contract is executed. The written contract  
2 shall include, but not be limited to, all of the following:

3 (1) A description of the services to be provided to the client by the professional engineer.

4 (2) A description of any basis of compensation applicable to the contract, and the method of  
5 payment agreed upon by the parties.

6 (3) The name, address, and license or certificate number of the professional engineer, and  
7 the name and address of the client.

8 (4) A description of the procedure that the professional engineer and the client will use to  
9 accommodate additional services.

10 (5) A description of the procedure to be used by any party to terminate the contract.

11 . . . "

12 10. Section 125.3 of the Code provides, in pertinent part, that the board may request the  
13 administrative law judge to direct a licentiate found to have committed a violation or violations of  
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
15 enforcement of the case.

#### 16 **SHAFER PROJECT**

17 11. On or about February 22, 2006, Robert Shaffer hired Nelson Engineering, Marius E.  
18 Nelson (Respondent), President, to perform land surveying services at property identified as  
19 20425 Iron Springs Road, Los Gatos, California (hereinafter "Shafer project"). Respondent's  
20 proposal included the following services:

21 a. Obtain field data to prepare a topographic map of the future leaching area (including  
22 the middle parking pad) at the subject property.

23 b. Obtain field data to prepare a topographic map of the upper building site at the  
24 subject property.

25 c. Obtain field data to verify the locations of the iron pipes at the property corners at the  
26 subject property.

27 In March, June and September 2006, Respondent prepared the Maps entitled Lands of  
28 Shafer, APN 544-34-033, County of Santa Clara, California (hereinafter "Shafer Maps") based on

1 field surveys that were performed in March, June and September 2006. The Shafer Maps depict  
2 the parcel and topographic data located in the field. The Shafer Maps also show control points,  
3 the benchmark, bearings and distances on the boundary lines, monuments and notes regarding the  
4 relationship of the boundary lines and corners to the found monuments with a tie to the  
5 monuments by bearing and distance from the property corners. The boundary lines appeared to  
6 have been based on the Record of Survey and Corner Record dated June 2002, but there was no  
7 indication of these documents on the Shafer Maps.

8 **FIRST CAUSE FOR DISCIPLINE**

9 (Incompetence and Negligence)

10 12. Respondent is subject to disciplinary action under section 8780(b) in that Respondent  
11 failed to depict and annotate the record and non-record monument data found in the field, and  
12 based on the Record of Survey and Corner Record, on the Shafer Maps. Respondent should have  
13 shown the basis of establishment of the boundary lines on the Shafer Maps. This information is  
14 also necessary if questions arise regarding the survey of the boundary lines shown on the Shafer  
15 Maps. Failure to provide this information demonstrates incompetence and/or negligence in the  
16 practice of land surveying.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Incompetence and Negligence)

19 13. Respondent is subject to disciplinary action under section 8780(b) in that Respondent  
20 failed to prepare and file a Record of Survey as required by section 8762(b)(5). The boundary  
21 lines and monuments established and shown on the Shafer Maps required preparing and filing a  
22 Record of Survey since the parcel is described in a deed and is not shown on a map of record and  
23 material discrepancies exist with the information contained in the record deed and the information  
24 shown on the Shafer Maps. This conduct demonstrates incompetence and/or negligence in the  
25 practice of land surveying.

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1 prepare improvement plans for the Cox Parcels. Later Mr. Cox and Respondent verbally agreed  
2 that Respondent would prepare a Parcel Map for the Cox Parcels.

3 Respondent prepared a number of maps and improvement plans, including the following:  
4 (1) A Lot Line Adjustment Parcel Map prepared in December 2006 which dealt with four of the  
5 six Cox Parcels; (2) a draft Parcel Map prepared on or about September 11, 2007; and (3) a draft  
6 improvement plan prepared September 27, 2007, which involved all six of the Cox Parcels.

#### 7 **SIXTH CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct)

9 18. Respondent is subject to disciplinary action under section 6775(h), in that Respondent  
10 failed to comply with sections 6749(a)(5) in that Respondent's contract with Mr. Cox dated  
11 January 15, 2006, failed to describe the procedure to be used by the parties to terminate the  
12 contract.

#### 13 **SEVENTH CAUSE FOR DISCIPLINE**

14 (Unprofessional Conduct)

15 19. Respondent is subject to disciplinary action under section 6775(h), in that Respondent  
16 failed to comply with sections 6735(a) in that Respondent's draft improvement plan prepared  
17 September 27, 2007, failed to contain Respondent's Registered Civil Engineer (RCE) license  
18 number as required.

#### 19 **EIGHTH CAUSE FOR DISCIPLINE**

20 (Negligence)

21 20. Respondent is subject to disciplinary action under section 8780(c) in that Respondent  
22 did not use the care ordinarily exercised in like cases by duly licensed professional engineers in  
23 the practice of land surveying as follows:

24 a. Respondent's Lot Line Adjustment Parcel Map prepared in December 2006 failed to  
25 analytically resolve boundary discrepancies. Respondent's boundary solution relied exclusively  
26 upon two found centerline monuments in Paloma Drive. Iron pins stamped RCE 13173  
27 ("Mulberg Pins") were called off by 1.9 feet. Respondent failed to locate any additional control,  
28 failed to conduct a thorough office and field search for record monuments for adjoining parcels

1 and failed to incorporate any resulting information into his boundary resolutions for the Cox  
2 Parcels and related easements.

3 **NINTH CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct)

5 21. Respondent is subject to disciplinary action under section 6775(d) and/or section  
6 8780(g), in that Respondent breached his verbal contract with Mr. Cox to prepare a Parcel Map.  
7 Respondent failed to complete and deliver this work product to Mr. Cox.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
11 decision:

12 1. Revoking or suspending Civil Engineer License Number C 20597, issued to Marius  
13 Eugene Nelsen;

14 2. Ordering Marius Eugene Nelsen to pay the Board for Professional Engineers and  
15 Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant to  
16 Business and Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.  
18  
19

20  
21 DATED: Sept 9, 2010

*Original Signed*

22 DAVID E. BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

Complainant

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